And in at least two more, practically the same result has been reached without legislative aid.[7]

Liabilities assumed by an executor or administrator after taking office are primarily his personal obligations.[8] Here the law follows its usual course in recognizing foreign created rights and obligations and allows him to be sued on them wherever found.[9]

The common remedy to-day for violation of duty by an executor or administrator is a proceeding on the administration bond. In a recent case in which the right to sue on a foreign probate bond was involved, the suit was allowed, but only on the ground that the misappropriated property was in that jurisdiction. *Cutrer* v. *State of Tennessee ex rel. Leggett*, 54 So. 434 (Miss.). The chief objection to such a suit would be that it involved a determination by another court than that having charge of the estate, whether there had been a breach of duty. But the foreign law on this point can be as easily determined as on any other.[10] And as the parties are evidently bound in their personal capacity it would seem that though there were no such exceptional circumstances as in the principal case, such a suit might be maintained even under the prevailing law.[11]

APPLICATION OF PRINCIPLES OF SURETYSHIP TO BILLS AND NOTES. — Two recent decisions, indefensible under the strict law of bills and notes, raise interesting questions as to the applicability of certain principles of suretyship law. In a Pennsylvania case where a deed of trust to a third person of all of a company's property was executed to secure the anomalous indorsers[1] on a demand note made by the company, the court held that, without any prior demand on the company, these indorsers could be charged on the note, as they had become the principal debtors. *In re Alldred's Estate* (*No. 1*), 79 Atl. 141 (Pa.).[2] An indorser's liability is secondary, and can only be fixed by proper notice of dishonor.[3] But where he is, or becomes, substantially the principal debtor, it seems fair that he should no longer take refuge behind the form of his secondary liability.[4] The maker and indorser may be regarded as having exchanged positions; and such an exchange of positions is well recognized in the law of suretyship.[5]

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[7] Laughlin & McManus *v.* Solomon, 180 Pa. St. 177; Keiningham *v.* Keiningham's Ex'r, 24 Ky. L. Rep. 1330.

[8] Sheperd *v.* Young, 8 Gray (Mass.), 152.

[9] Johnson *v.* Wallis, 112 N. Y. 230.

[10] See Tunstall *v.* Pollard, 11 Leigh (Va.), 1, 28.

[11] See Johnson *v.* Jackson, 56 Ga. 326.

[1] The principal case also holds that under the Negotiable Instruments Law, §§ 63 and 64 (PA. LAWS, 1901, p. 194), an anomalous indorser is an indorser. *Accord*, Baumeister *v.* Kuntz, 53 Fla. 340. *Contra*, Mercantile Bank *v.* Busby, 120 Tenn. 652. An accommodation indorser is entitled to strict notice. French's Executrix *v.* Bank of Columbia, 4 Cranch (U. S.), 141.

[2] *Accord*, Coddington *v.* Davis, 3 Den. (N. Y.) 16; Barrett *v.* Charleston Bank, 2 McMull. (S. C.) 191. *Contra*, Creamer *v.* Perry, 17 Pick. (Mass.) 332; Selby's Admr. *v.* Brinkley, 17 S. W. 479 (Tenn.).

[3] NEGOTIABLE INSTRUMENTS LAW, § 66, cl. 2.

[4] Corney *v.* Da Costa, 1 Esp. 301; Bond *v.* Farnham, 5 Mass. 170. See Brown *v.* Maffey, 15 East 216, 223; Denny *v.* Palmer, 5 Ired. (N. C.) 610, 625.

[5] Chaplin *v.* Baker, 124 Ind. 385.

The difficulty lies in determining when this has taken place. Where there is an express contract between the maker and indorser that the latter will assume the primary liability, this result is reached.[6] So also it may be worked out from all the circumstances, as where the note is made for the accommodation of the payee-indorser,[7] or where he receives a sum of money for the avowed purpose of taking up the debt.[8] But suretyship law does not go much beyond that point, and to do so in the case of an indorser would be even more difficult than in most cases of suretyship.[9] Therefore, where the indorser receives property from the maker, merely as security, whether it be sufficient to cover the amount of the note,[10] or whether it be all the maker's property,[11] it cannot be said that by that he has undertaken the primary liability.[12] He has shown no intention to give up his contract as indorser. Moreover, he cannot have recourse to the security in his hands until he has been properly charged.[13] So the argument that he will not be harmed in such a situation by failure to receive proper notice of dishonor assumes the very point to be proved, namely, that his liability has been properly fixed so that he can realize on the security.[14] Yet many cases in this country have relaxed the rule requiring notice of dishonor, some presuming an assumption of primary liability from insufficient data,[15] and others apparently making no attempt to proceed on any principle.[16] But the better authority, and certainly the correct principle, is, that, to find an assumption of primary liability, something more must be shown than the bare fact that the indorser received all the maker's property, even though sufficient to cover the note.[17] So this Pennsylvania case would seem to have gone very far, for a transfer to a trustee [18] "to secure the indorser" would rather raise the contrary presumption that the parties intended the indorser to retain his secondary liability.[19]

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[6] Marshall *v.* Mitchell, 35 Me. 221. *Contra*, Baker *v.* Birch, 3 Campb. 107.

[7] Brown *v.* Maffey, *supra.*

[8] Wright *v.* Andrews, 70 Me. 86.

[9] An indorser is originally bound on a separate contract from that of the maker, whereas a surety is oftenest bound on the same contract as the principal is. Converse *v.* Cook, 25 Hun (N. Y.) 44.

[10] Kramer *v.* Sandford, 4 Watts & S. (Pa.) 328; Whittier *v.* Collins, 15 R. I. 44. *Contra*, Develing *v.* Ferris, 18 Oh. 170.

[11] Haskell *v.* Boardman, 8 Allen (Mass.) 38; Watkins *v.* Crouch & Co., 5 Leigh (Va.) 522. *Contra*, State Bank *v.* Myers, 1 Bailey (S. C.), 412. Most of the authorities *contra* insist that the property must also be sufficient to cover the amount of the note. Bank *v.* McGuire, 33 Oh. St. 295; Woodbury *v.* Crum, 1 Biss. (U. S.) 284. But this distinction seems immaterial, for in either case it is only security.

[12] Wilson *v.* Senier, 14 Wis. 380. *Contra*, Mead *v.* Small, 2 Me. 207.

[13] Dufour *v.* Morse, 9 La. 333; Oswego Bank *v.* Knower, Hill & D. (N. Y.) 122. And if he pays before he is properly charged, he has no right to the security. Roscow *v.* Hardy, 12 East 434.

[14] See 2 DANIELS, NEGOTIABLE INSTRUMENTS, § 1134. Moreover this argument is immaterial, for the court has no right to remake the indorser's contract. An indorser with knowledge of the maker's insolvency is still entitled to demand and notice, though he would not be harmed if notice were not given. Nicholson *v.* Gouthit, 2 H. Bl. 609; Jackson *v.* Richards, 2 Caines (N. Y.) 343.

[15] *Cf.* Bond *v.* Farnham, *supra*; Mechanics Bank *v.* Griswold, 7 Wend. (N. Y.) 165.

[16] *Cf.* Hull *v.* Myers, 90 Ga. 674, 678; Walker & Faulkner *v.* Walker, 7 Ark. 542.

[17] Ray *v.* Smith, 17 Wall. (U. S.) 411; Moses *v.* Ela, 43 N. H. 557.

[18] Denny *v.* Palmer, *supra.* See 2 DANIELS, NEGOTIABLE INSTRUMENTS, § 1141.

[19] But it has been held that the fact that the indorsers were directors of the company which made the note disentitled them to notice. Hull *v.* Myers, *supra.*

In a Texas case a bank, an indorsee in due course of a note, learned of fraud and failure of consideration between the original parties. At maturity it had in its hands sufficient deposits of the payee-indorser to cover the note. It was not allowed to recover against the maker. *Union National Bank* v. *Menefee*, 134 S. W. 822 (Tex., Ct. Civ. App.).[20] Under these facts the payee-indorser should ultimately pay the amount of the note. So here again he may be regarded as substantially the principal debtor with the maker as surety. By suretyship law, the creditor must in certain cases take some slight affirmative action against the principal.[21] And the better view would seem to be that where, as in this case, the creditor has merely to charge the amount of the debt against the principal on its books, and where such action is of vital importance to the surety, the creditor's failure to act will discharge the surety.[22] The only safe thing for the holder to do, therefore, is, upon any suspicion of a defense between the original parties, to assert at maturity its lien over the payee's funds.[23]

RECENT CASES.

ACCRETION — APPLICABILITY TO WATERS ACTUALLY NON-NAVIGABLE. — The coast lands of the plaintiff and the defendant were divided by an inlet. The maximum depths of its channel were seven feet at high tide, and three feet at low. It shifted laterally at the rate of four hundred feet each year, so that it ran through the defendant's land; the process being one of erosion on one side of the inlet and deposit of sand on the other. *Held*, that the plaintiff has no title to the strip between the former and present channels of the inlet. *Town of Hempstead* v. *Lawrence*, 70 N. Y. Misc. 52 (Sup. Ct.).

Common-law courts have advanced at least seven distinct grounds for the right of acquiring land by accretion: (1) *De minimis non curat lex*. See 2 BL. COMM. 262; *Lovingston* v. *County of St. Clair*, 64 Ill. 56, 59. But by accretion *minima* become *magnum*. See *Attorney-General* v. *Chambers*, 4 De G. & J. 55, 68. (2) It is impossible to identify small additions to land daily. See *Foster* v. *Wright*, 4 C. P. D. 438, 446. (3) The law disregards things of imperceptible growth. See *In the Matter of the Hull & Selby Ry.*, 5 M. & W. 327, 333. (4) Acquisition of title by accretion compensates for loss of title by erosion. See 2 BL. COMM. 262; *Peuker* v. *Canter*, 62 Kan. 363, 372. (5) It is compensation for the expense of preventing erosion. See *Gifford* v. *Yarborough*, 5 Bing. 163, 166. *Contra*, *Municipality No. 2 v. Orleans Cotton Press*, 18 La. 122, 228, 243. (6) Changing a littoral into an inland owner is inequitable. See *Steers* v. *City of Brooklyn*, 101 N. Y. 51, 56; *Lamprey* v. *State*, 52 Minn. 181, 197. (7) Otherwise there would be numberless unoccupied littoral gores. See *Gifford* v. *Yarborough*, *supra*. Based upon any of these grounds, the doctrine can apply to waters actually non-navigable. And decisions have so ap-

[20] This doctrine seems to be law only in Texas. Van Winkle Gin & Machinery Co. *v.* Bank, 89 Tex. 147. *Contra*, Sloan *v.* Union Banking Co., 67 Pa. St. 470; Hoge *v.* Lansing, 35 N. Y. 136. See Bank *v.* Peltz, 176 Pa. St. 513, 518.

[21] See 1 BRANDT, SURETYSHIP, §§ 487, 494, 495, 498, 501–505.

[22] McDowell *v.* Bank, 1 Har. (Del.) 369; Commercial Nat. Bank *v.* Henniger, 105 Pa. St. 496. *Contra*, Strong *v.* Foster, 17 C. B. 201; Voss *v.* German American Bank, 83 Ill. 599.

[23] See 9 HARV. L. REV. 146.